

TOWN OF HOLDERNESS
Zoning Board of Adjustment

Regular Meeting Minutes May 9, 2017

REGULAR MEETING:

Members Present: Robert Maloney, Chairman Wendell Broom, Vice Chairman
Gary Karp, Member Jude Ruhm, Member Kristen Fuller, Alternate
Gary Johonnett, Alternate

Members Not Present:

Staff Present: Eleanor Mardin, Compliance Officer Nancy Decoteau, Admin Assistant
Others Present: Chris Boldt Esq. Walter Mitchell Esq. Robert Snelling

CALL TO ORDER:

The meeting was called to order at 6:17 P.M. A quorum was present.

At 6:30pm R. Maloney stated the following case would be considered:

Continued Public Hearing: Case #418-02-17 Kevin & Deborah Pennell represented by Christopher L. Boldt, Esq.: A request for Variances to the degree necessary from Section 400.8.1.1 (minimum side setback) and/or Section 700.2 et seq. concerning the addition of dormers at property located at 8 Vinga Court, Unit 2 identified as Tax Map 102, Lot 030-002, in the General Residential District, Town of Holderness. R. Maloney indicated Case #418-02-17 was continued from February 14, 2017 and April 11, 2017. R. Maloney indicated that the date and time of the continued public hearing was made know at the previous meeting.

Alternate K. Fuller was appointed a voting member for the meeting and none of the members indicated they had a conflict of interest with the application.

B. Maloney stated the initial Public Hearing was held on February 14, 2017 and that the Board determined the application is complete, the fees were paid, the required public notice was given, the application does not have a regional impact and sufficient documents have been submitted to conduct the public hearing. B. Maloney stated that at the Public Hearing held on April 11, 2017 the Board received testimony from the applicant and provided opportunity for input in favor and in opposition of the application.

B. Maloney stated that the Board members received the following information submitted by the applicant:

1. Pennell Residence Addition & Renovation Floor Plans A101,
2. Pennell Residence Addition & Renovation Exterior Elevations A201 and
3. Anderson Campanella Architects letter dated May 2, 2017.

B. Maloney opened the continued Public Hearing for Case# 419-02-17 at 6:20pm.

C. Boldt stated the pre-existing and proposed dimensions were calculated by a local contractor, K-Mac Builders, and verified by the architect, Felicia Campanella, AIA, as stated in her letter dated May 2, 2017.

C. Boldt reviewed the information on the Pennell Residence Addition & Renovation Floor Plans A101 and noted the following:

- The existing living space was calculated to be 387 sq. ft.
- The proposed living space was calculated to be 379.5 sq. ft.
- The stairwell area was included in both the existing and proposed calculations.
- The living space area removed consisted of two separate sections; a 9.0 sq. ft. area and a 14.3 sq. ft. area which comprise a total area of 23.3 sq. ft. which was removed from the existing living space.
- The new living space area created by the proposal consisted of two separate 1.9 sq. ft. sections which comprise a total area of 15.8 sq. ft. of new living space.
- 387sq. ft. of existing living space, less the 23.3 sq. ft. of living space removed, plus the 15.8 sq. ft. of new living space calculates out to 379.5 sq. ft. of living space.

C. Boldt stated that the proposal has a net reduction of 7.5 sq. ft. of living space square footage.

C. Boldt stated that because no expansion is being proposed, per the Zoning Ordinance definition of Expansion that no Variance is necessary.

C. Boldt reviewed the information on Pennell Residence Addition & Renovation Exterior Elevations A201 and stated that the height of the building is in compliance with the 35 ft. height restriction of the Zoning Ordinance.

G. Karp stated the existing living space calculation includes the entire floor area; knee wall to knee wall with the height of the knee wall being 3' 1".

G. Karp stated the American National Standards Institute standards state the following:

If a room has a sloped ceiling, at least one-half of the finished floor area must have a ceiling height of at least 7 feet. Otherwise, omit the entire room from the floor area calculations. If a room with a sloped ceiling meets the one-half-of-floor-area –over- 7-feet requirement, then include all the floor space with a ceiling height over 5 ft.

G. Karp stated his opinion that the existing living space calculation should only include the area of floor space where the ceiling is at least 5 ft. high.

G. Karp stated the International Residence Code Section R304.4 states that *"Portions of a room with a sloping ceiling measuring less than five feet or a furred ceiling measuring less than seven feet from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required habitable area for that room"*.

G. Karp also referenced an article *"The Fannie Mae 5' Rule: Fact or Myth"* which refers to the same issue of determining living space in rooms with sloped ceilings.

G. Karp summarized his concern by stating that the calculation of existing square footage should not reach all the way from knee wall to knee wall.

G. Karp stated the existing living space should be calculated as the area with ceilings at least 5 ft. high.

C. Boldt stated that the ANSI standards are not part of the definition of Expansion and are not referenced in the Zoning Ordinance.

C. Boldt stated that even if the numbers were recalculated it would be a wash as both the existing and proposed living space areas would be similarly affected.

C. Boldt stated that the full floor area, knee wall to knee wall, was being used as living space as evidenced in the photos presented at the April 11, 2017 hearing.

W. Broom stated his opinion that the area close to the knee wall should not be included in the calculation of living space.

B. Maloney stated his opinion that the pictures show that the head of the beds were up against the knee wall which show that the entire floor area was being used as living space.

C. Boldt stated his concern regarding adding the provisions referenced by G. Karp to the interpretation of the definition of Expansion because there is not a reference to them in the Zoning Ordinance.

C. Boldt stated it is understood that the realm of building and assessing may use the standards presented but that they are not part of the Zoning Ordinance and it would be improper to apply those standards without the voters including them in the Zoning Ordinance.

G. Karp stated it is illogical to him that adding the dormers in this proposal does not add living space.

C. Boldt stated that there is a small decrease in the proposed living space square footage because some of the floor space is walled off.

E. Mardin, Compliance Officer, referred to Section 700.2.1.3 of the Zoning Ordinance which states: *"Adding a pitched roof will not be considered an expansion provided it does not increase any living or storage space."*

E. Mardin stated that the definition of Living Space in the Zoning Ordinance states that the *"area includes three dimensional, fully enclosed space used for indoor living, calculated in cubic feet in area, including dormers and lofts, but does not include crawl spaces and screened-in porches as long as windows are not installed"*.

C. Boldt responded that it was already determined that the proposal does not fall under "adding a pitched roof".

R. Maloney pointed out the conflict with the reference to cubic feet in the Living Space definition and the reference to square feet in the Expansion definition.

R. Maloney stated that the ZBA should draft a proposed amendment to the Zoning Ordinance to clarify the issue.

C. Boldt reminded the Board that the discussion concerns whether or not a Variance is necessary and that if it is determined that a Variance is necessary he will make an argument as to how the proposal meets the criteria.

C. Boldt stated that a Variance is not necessary because the proposal can not be considered an Expansion because of the change to the Zoning Ordinance that removed the cubic foot reference in the definition of Expansion.

R. Maloney asked for public comments and received none.

R. Maloney asked the Board members if enough information was presented to make a determination as to whether a Variance is necessary or not.

Board members indicated they were prepared to make a determination.

R. Maloney closed the Public Hearing on the issue of whether a Variance is necessary at 6:55PM to deliberate on whether a Variance is needed.

R. Maloney asked for comments from the Board members.

G. Karp stated his opinion that the proposal is an expansion and that a Variance is needed.

W. Broom stated his opinion that he is not sure of the calculation of living space.

W. Broom added that it appears the proposal does not meet the definition of Expansion in the Zoning Ordinance as the end result is a slight decrease in living area square footage.

W. Broom stated that a Variance would not be needed if there is no Expansion as defined in the Zoning Ordinance.

K. Fuller stated she asked a Planning Board member who participated in putting forth the amendment to remove the cubic footage reference in the definition of Expansion.

K. Fuller stated the Planning Board member reported the intent was to make an Expansion only in the footprint of the structure.

K. Fuller stated that she did not think the Variance is necessary.

J. Ruhm stated her agreement that only a change to the footprint would be considered an expansion.

J. Ruhm added that the dormers added are not higher than the existing ridge line of the roof.

R. Maloney asked if there were any further comments from the Board.

MOTION: "To make a determination a Variance from Section 400.8.1.1 (minimum side setback) and/or Section 700.2 et seq. is not necessary for Case #418-02-17 based on the testimony provided as the proposal does not increase the square footage of living space as shown on the following documents:

- 1. Pennell Residence Addition & Renovation Floor Plans A101,**
- 2. Pennell Residence Addition & Renovation Exterior Elevations A201 and**
- 3. Anderson Campanella Architects letter dated May 2, 2017."**

Motion: G. Karp

Second: K. Fuller

Discussion: R. Maloney stated for clarification that a vote in favor of the motion would be voting that a Variance is not necessary.

Motion Passed: 3 – Yes 2 – No

OTHER BUSINESS:

G. Johonnett suggested that K. Fuller be appointed as a full member as he would like to continue to serve as an alternate.

The Board agreed.

APPROVAL OF MINUTES:

The Board did not take any action on the approval of the April 11, 2017 minutes.

ADJOURNMENT:

At 7:30pm the following motion was made:

MOTION: "To adjourn."

Motion: B. Maloney

Second: G. Karp

Discussion: None

Motion Passed: 5 – Yes 0 – No

Respectfully submitted,

Nancy Decoteau
Administrative Assistant